

Expedited Bill No. 4-03
Concerning: Personnel – Retirement -
Amendments
Revised: Mar. 11, 2003 Draft No. 3
Introduced: March 4, 2003
Enacted: March 11, 2003
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) conform County employee retirement plans to certain requirements that the Internal Revenue Service recently determined are necessary to maintain the plans' qualified status; and
- (2) generally amend County law regarding the County employee retirement system.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-36, 33-42, 33-44, 33-113, 33-114, 33-118, and 33-120

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Section 1. Sections 33-36, 33-42, 33-44, 33-113, 33-114, 33-118, and 33-120 are amended as follows:

33-36. Establishment.

* * *

(d) Notwithstanding the provisions of any plan, the County must provide contributions, benefits, and service credit for qualified military service according to Section 414(u) of the Internal Revenue Code.

* * *

33-42. Amount of pension at normal retirement date or early retirement date.

* * *

(h) *Maximum annual contribution to elected officials' plan.*

(1) Regardless of any other provision in this article, the annual addition described in this subsection that is allocated in any limitation year to the retirement accounts of any elected officials' participant must not exceed the lesser of:

(A) [Thirty thousand dollars (\$30,000.00)] \$40,000 (the "dollar limitation"), as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases; or

(B) [Twenty-five (25)] 100 percent of the participant's compensation as defined below (the "percent limitation").

* * *

(3) [For purposes of] In this subsection:

(A) [Compensation means the total compensation paid for services rendered, including amounts deferred by an elected officials' participant, but excluding fringe benefits] for purposes of applying Section 415 of the Internal

Revenue Code, “compensation” has the same meaning as provided in Treasury Regulation Section 1.415-2(d)(1), including amounts contributed at the election of the participant that are not includible in the gross income of the participant under Sections 125, 132(f)(4), 402(g)(3), or 457 of the Internal Revenue Code; and

* * *

- (5) For purposes of this subsection [(h)], the maximum dollar limitation of [thirty thousand dollars (\$30,000.00)] \$40,000 must be automatically increased as permitted by United States Treasury Regulations to reflect cost-of-living adjustments.
- (6) *Multiple plan participation.* This paragraph applies only for plan years ending before January 1, 2000. Regardless of paragraph (1), the otherwise permissible annual benefits for any participant in the elected officials’ [participant] plan who also participates in another qualified plan sponsored by the County or a participating agency that is a defined benefit plan must be further adjusted to the extent necessary to prevent disqualification of the plans under Section 415 of the Internal Revenue Code. Section 415 imposes the following additional limitations on the benefits payable to [an] a participant in the elected officials’ [participant] plan who also may be participating in another qualified plan of the county or any participating agency that is a defined benefit plan:

* * *

33-44. Pension payment options and cost-of-living adjustments.

* * *

(p) Limitations Under Internal Revenue Code. Distributions under a plan must be subject to the limitations of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit rules under Section 401(a)(9)(G) of the Internal Revenue Code.

* * *

33-113. Definitions.

In this Division the following words and phrases have the following meanings:

* * *

(d) *County service* means any period of County employment during which a participant is:

(1) in pay status, or

(2) on an approved leave of absence without pay on or after January 1, 2002.

* * *

33-114. Establishment.

* * *

(c) Uniformed Services Employment and Reemployment Rights Act. Notwithstanding any provision of a plan, the County must provide contributions, benefits and service credit for qualified military service according to Section 414(u) of the Internal Revenue Code.

* * *

33-118. Maximum annual contribution.

(a) *Contribution limitations.*

(1) Notwithstanding any other provision in this Division, to the extent required under the Internal Revenue Code, the annual additions described in this Section that are allocated in any

[limitation] plan year to the retirement accounts of any participant must not exceed the lesser of:

- (A) [~~\$30,000~~] \$40,000 (the “dollar limitation”), effective January 1, 2002, [(or, if greater, 25% of the dollar limitation in effect under Internal Revenue Code Section 415(b)(1)(A)] as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases[]]; or
- (B) [25 %] 100 percent of the participant’s compensation [as defined in this Section] (the “percent limitation”), effective January 1, 2002.

* * *

(3) [For purposes of this Section only:

(A) compensation means the total amount of compensation paid by the County to the participant for services rendered in the course of employment with the County for the limitation year.

(i) Compensation includes: overtime pay, bonuses, other special pay, and benefits to the extent includable in the employee's gross income for federal income tax purposes. Compensation also includes any compensation a non-public safety employee would have received had the participant not incurred a disability as provided in Section 33-120(b)(3).

(ii) Compensation excludes: County contributions to qualified pension or profit sharing plans, and contributions made to a County benefit plan out of

the employee's compensation to the extent those contributions are not includable in the employee's gross income for federal income tax purposes.

(B) The limitation year means the plan year.]

In this Section, for purposes of applying Section 415 of the Internal Revenue Code, “compensation” has the same meaning as provided in Treasury Regulation Section 1.415-2(d)(1), including amounts contributed at the election of the participant that are not includible in the gross income of the participant, under Sections 125, 132(f)(4), 402(g)(3), and 457 of the Internal Revenue Code.

* * *

[(b) *Multiple Plan Participation Limitation.* The permissible annual benefits for any participant who is also a member of another qualified plan sponsored by the County that is a defined benefit plan must be further adjusted to the extent necessary to prevent disqualification of the plans under Section 415 of the Internal Revenue Code. If any adjustment is necessary, the benefit provided by the defined benefit plan must be reduced.]

[(c)]

(b)

* * *

33-120. Distribution of benefit.

* * *

(d) Limitations of Internal Revenue Code Section 401(a)(9).

Distributions under a plan must be subject to the limitations of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit rules in Section 401(a)(9)(6) of the Internal Revenue Code.

* * *

Sec. 2. Rule of Interpretation.

The amendments made by Section 1 of this Act must be interpreted to comply with requirements stated in letters issued on December 11, 2002, and January 14, 2003, by the Internal Revenue Service to the County regarding the continued qualification of County employee retirement plans.

Sec. 3. Retroactivity.

- (a) The amendment made by Section 1 of this Act to Code Section 33-36 takes effect December 12, 1994.
- (b) The amendments to Section 33-42(h)(1)(A) and (B) take effect January 1, 2002.
- (c) The amendments to Section 33-42(h)(3)(A) take effect January 1, 2002.
- (d) The amendments to Section 33-42(h)(5) take effect January 1, 2002.
- (e) The amendments to Section 33-42(h)(6) take effect January 1, 2000.
- (f) The amendment to Section 33-44 takes effect January 1, 2001.
- (g) The amendments to Section 33-113(d) take effect July 1, 2002.
- (h) The amendment to Section 33-114 takes effect December 12, 1994.
- (i) The amendments to Section 33-118(a)(3) take effect January 1, 1998.
- (j) The amendments to Section 33-118(b) take effect January 1, 2000.
- (k) The amendment to Section 33-120 takes effect January 1, 2001.

Sec. 4. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

